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Appeal from State Corporation Commission.

Complaint by the Commonwealth of Virginia, on the relation of the City of Clifton Forge, against the Virginia-Western Power Company. From an order of the State Corporation Commission defendant appeals, the case being consolidated with appeals by the same defendant from other orders entered by the Corporation Commission on complaints by the Commonwealth of Virginia, on relation of the City of Buena Vista, of the Town of Covington, and of the Town of Lexington against the same defendant. Orders affirmed.

F. W. King, of Clifton Forge, and *J. M. Perry*, of Staunton, for appellant.

O. B. Harvey and *John W. Bear*, both of Clifton Forge, for appellee city of Clifton Forge.

H. S. Rucker, of Buena Vista, for appellee city of Buena Vista.

R. C. Stokes, of Covington, for appellee town of Covington.

Frank Moore and *O. C. Jackson*, both of Lexington, for appellee town of Lexington.

SHUMAKER'S ADM'X *v.* ATLANTIC COAST LINE R. CO.

June 12, 1919.

[99 S. E. 739.]

1. Pleading (§ 369 (3)*)—Motions—Proceedings under Federal or State Statutes—Right to Require Election.—In an action by an administratrix to recover for decedent's death by being struck by a cut of cars while repairing defendant's locomotive, where the declaration did not clearly indicate whether decedent was engaged in interstate or intrastate commerce at the time of the injury, defendant could not require plaintiff to elect whether to proceed under the federal or state statute, although it might require her to state the facts in such a way that a court could apply the appropriate statute.

2. Pleading (§ 6*)—Matters of Law—Judicial Notice.—It is never necessary to plead any matter of law of which the court will take judicial notice, it being the function of pleading to state facts and not law.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 631; 11 Va.-W. Va. Enc. Dig. 218.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. **Evidence (§ 34*)—Judicial Notices—Acts of Congress.**—Judicial notice will be taken of the public acts of Congress, as well as those of the state.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 640.]

4. **Commerce (§ 8 (6)*)—Injuries to Servant—Applicability of State and Federal Statutes.**—In an action for wrongful death of a railroad employee, the court will apply federal and state acts as each are appropriate, and wherever an act of Congress is applicable it is exclusive, but if not applicable, and the state statute is, the latter will be applied.

5. **Master and Servant (§ 145*)—Injuries to Servant—Danger Signals—Construction of Rules.**—Under a railroad rule requiring a car repairer to display a blue signal, and providing that other cars must not be placed on the same track so as to intercept the view of the signal without first notifying the workman, where a cut of cars is already on a repair track, and an engine to be repaired is placed on the same track close to such cars but not coupled thereto, the signal should be placed at the end of the cut of cars farthest from the engine as a protection from danger from that side.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 685.]

6. **Master and Servant (§ 276 (8)*)—Injuries to Servant—Proximate Cause—Disobedience of Rules.**—In an action for the death of an experienced car repairer killed by other cars striking the engine which he was repairing, decedent's failure to display a blue signal, as required by the rules of the company, held the sole proximate cause of his death.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 710.]

7. **Master and Servant (§ 213 (1)*)—Injuries to Servant—Assumption of Risk—Violation of Rules.**—Violation by a servant of a rule established for his protection constitutes an assumption of risk.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 695.]

8. **Master and Servant (§ 278 (19)*)—Injuries to Servant—Abrogation or Abandonment of Rules—Evidence.**—Rules for the protection of servants in dangerous employments, and with which they are entirely familiar, will not be held to have been abrogated or abandoned, unless that conclusion is plainly warranted by the evidence and necessary for the protection of the servant.

Sims, J., dissenting.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 686.]

Error to Law and Equity Court of City of Richmond.

Action by Shumaker's administratrix against the Atlantic Coast Line Railroad Company. Judgment for defendant was

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

rendered on demurrer to the evidence, and plaintiff brings error. Affirmed.

O'Flaherty, Fulton & Byrd, of Richmond, for plaintiff in error.

E. P. Cox, of Richmond, and *W. B. McIlwaine* and *Bernard Mann*, both of Petersburg, for defendant in error.

CROWDER *v.* CROWDER et al.

June 12, 1919.

[99 S. E. 746.]

1. Appeal and Error (§ 80 (1)*)—Finality of Decree—Divorce Suit.—In suit for divorce on the ground of desertion and to set aside as fraudulent sale of property made by defendant husband to his brothers, decree held final to support an appeal, though the divorce prayed for had not been granted in terms, which in effect sustained plaintiff's claim that she was entitled to divorce for desertion, and found against her claim of fraud in the sale on the part of the buyers.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 438.]

2. Divorce (§ 276 (4)*)—Fraudulent Sale by Husband—Evidence.—In suit for divorce and to set aside as fraudulent a sale of defendant husband's property to his brothers, evidence held to show that the husband committed a fraud on the rights of his wife and child, and that his brothers participated therein, and aided and abetted him, so that the transfers were void under Code 1904, § 2458.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 221.]

3. Divorce (§ 276 (4)*)—Fraudulent Conveyance by Husband.—While fraud in sale of husband's property must be clearly proved by the wife, it is not necessary that it should be expressly shown.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 562; 14 Va.-W. Va. Enc. Dig. 490.]

4. Divorce (§ 275 (3)*)—Fraudulent Conveyances—Knowledge of Fraud.—Where the fraud of a husband, grantor in a deed or a seller of personalty, has been clearly shown, and it is sought to charge the grantee or purchaser with guilty knowledge, it is not necessary to prove his positive knowledge of the fraudulent intent, but sufficient to show knowledge on his part of facts and circumstances which would have excited the suspicion of a man of ordinary prudence and put him on inquiry.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 562.]

5. Divorce (§ 275 (2)*)—Transfer in Fraud of Wife—Statute.—Immediately on desertion entitling a wife to divorce and alimony, if there has been a breach of duty by the husband, and if he transfers

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